

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
PUGET SOUND MANUFACTURING )  
COMPANY, )  
 )  
Appellant, )  
 )  
v. )  
 )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
 )  
Respondent. )

PCHB No. 79-91

FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 9.03 of respondent's Regulation 1, came before the Pollution Control Hearings Board, Nat W. Washington, Chairman, and David Akana (presiding) at a formal hearing in Tacoma on November 26, 1979.

Appellant was represented by Zephania Craft, boiler operator, and Allan Warnick, Corporate Secretary; respondent was represented by its attorney, Keith D. McGoffin.

1 Having heard the testimony, having examined the exhibits, and  
2 having considered the contentions of the parties, the Board makes  
3 these

#### 4 FINDINGS OF FACT

##### 5 I

6 On April 23, 1979 at about 3:22 p.m. while driving near  
7 appellant's operation located at 1123 St. Paul Avenue in Tacoma,  
8 respondent's inspector saw a white plume coming from appellant's  
9 boiler stack. After positioning himself, the inspector recorded a  
10 60% opacity reading for eight consecutive minutes from the stack.  
11 After taking a photograph of the stack, the inspector visited the  
12 site and discovered wood chips burning in the boiler. Appellant had  
13 shutdown the boiler prior to 2:00 p.m. but because of the heat of  
14 the boiler, and because it was not airtight, a charge of wood chips  
15 had accidentally caught fire.

16 For the foregoing event, appellant was issued a Notice of  
17 Violation of Section 9.03(b) from which followed a \$250 civil  
18 penalty. An appeal from respondent's action was taken to this Board  
19 seeking waiver or reduction of the penalty.

##### 20 II

21 Appellant has taken steps since the above incident to keep fires  
22 from occurring in a similar fashion: the boiler is not charged  
23 after the day's work; the brickwork was repaired and the boiler made  
24 airtight.

##### 25 III

26 Appellant has previously received five Notices of Violation and

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER 2

1 one civil penalty for alleged violations of Section 9.03 during the  
2 period starting May 24, 1971 and ending on June 11, 1976. The  
3 earlier record does not reflect the record of the present boiler  
4 operator.

#### 5 IV

6 Pursuant to RCW 43.21B.260, respondent has filed a certified copy  
7 of its Regulation 1 and amendments thereto which we notice.

8 Section 9.03(b) of Regulation 1 makes it unlawful for any person  
9 to cause or allow the emission of any air contaminant, here smoke,  
10 for more than three minutes in an hour which is equal or greater  
11 than 20% opacity.

12 Section 3.29 provides for a penalty of up to \$250 per day for  
13 each violation of Regulation 1.

#### 14 V

15 Any Conclusion of Law which should be deemed a Finding of Fact  
16 is hereby adopted as such.

17 From these Findings the Board comes to these

#### 18 CONCLUSIONS OF LAW

##### 19 I

20 Appellant violated Section 9.03(b) of respondent's Regulation 1  
21 on April 23, 1979 for which a civil penalty may be properly assessed.

##### 22 II

23 Under the circumstances of the case, some mitigation of the  
24 penalty from the maximum amount is warranted. One half of the \$250  
25 civil penalty should be suspended on condition that no violation of  
Regulation 1 occur for a period of six months from the date of this

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER 3

1 order.

2 III

3 Any Finding of Fact which should be deemed a Conclusion of Law  
4 is hereby adopted as such.

5 From these Conclusions, the Board enters this

6 ORDER

7 The \$250 civil penalty is affirmed, provided however, that \$125  
8 of the civil penalty is suspended on condition that appellant not  
9 violate any provision of respondent's Regulation 1 for a period of  
10 six months from the date of this Order.

11 DATED This 14<sup>th</sup> December, 1979.

12 POLLUTION CONTROL HEARINGS BOARD

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14   
15 NKT W. WASHINGTON, Chairman

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17 DAVID AKANA, Member

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FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER !